

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

BORIS MIZHEN; MEDIA NETWORK,
INC.; NEW AGE OPT-IN, INC.; I-
PERMISSION, INC.; DMITRI
KOVALSKY; MUHAMMED MOHSAN
UL MOULA; ESOLUTIONS
TECHNOLOGY, INC.; DECAPTCHER;
AND JOHN DOES 1-20,

Defendants.

Case No. 2:10-cv-00966-RSM

**STIPULATED PERMANENT
INJUNCTION AND ORDER**

STIPULATION

Plaintiff Microsoft Corporation ("Microsoft") and defendants Boris Mizhen, Media Network, Inc., New Age Opt-In, Inc., I-Permission, Inc. and Dmitri Kovalsky, by and through their undersigned counsel of record, hereby stipulate to the entry of the following Permanent Injunction.

DATED this 6th day of June, 2011.

ORRICK, HERRINGTON & SUTCLIFFE
LLP

AOKI LAW PLLC

By: /s/ Jeffrey L. Cox
Mark S. Parris (WSBA #13870)
mparris@orrick.com
Jeffrey L. Cox (WSBA #37534)
jcox@orrick.com

By: /s/ Russell M. Aoki
Russell M. Aoki (WSBA #15717)
russ@aokilaw.com

701 5th Avenue
Suite 5600
Seattle, WA 98104-7097
Telephone: +1-206-839-4300
Facsimile: +1-206-839-4301

720 Olive Way, Suite 1525
Seattle, WA 98101-1816
Telephone: +1-206-624-1900
Facsimile: +1-206-442-4396

Gabriel M. Ramsey (*pro hac vice*)
gramsey@orrick.com
I. Neel Chatterjee (*pro hac vice*)
nchatterjee@orrick.com
Jacob M. Heath (*pro hac vice*)
jheath@orrick.com

Attorneys for Defendants Boris Mizhen,
Media Network, Inc., New Age Opt-In, Inc.
and I-Permission, Inc.

1000 Marsh Road
Menlo Park, CA 94025
Telephone: +1-650-614-7400
Facsimile: +1-650-614-7401

Attorneys for Plaintiff

JOHNS MONROE MITSUNAGA
KOLOUŠKOVÁ PLLC

By: /s/ Darrell S. Mitsunaga
Darrell S. Mitsunaga (WSBA #12992)
Mitsunaga@jmmmlaw.com

1601 114th Avenue SE, Suite 110
Bellevue, WA 98004-6969
Telephone: +1-425-451-2812
Facsimile: +1-425-451-2818

Attorneys for Defendant Dmitri Kovalsky

ORDER

Plaintiff Microsoft Corporation (“Microsoft”) and Defendants Boris Mizhen, Media Network, Inc., New Age Opt-In, Inc., I-Permission, Inc. and Dmitri Kovalsky (“Defendants”) have entered into a binding Settlement Agreement resolving all claims against Defendants arising out of the actions alleged in the Complaint in this matter, and have stipulated to the entry of this Permanent Injunction in favor of Microsoft against Defendants.

Based on the Stipulation of the parties, it is hereby ORDERED as follows:

1. Pursuant to Federal Rule of Civil Procedure 65(d), Defendants, their agents, assignees, and successors-in-interest, and those in active concert or participation with them, are permanently enjoined from, knowingly:

a. sending, transmitting, or advertising in, or directing, aiding, facilitating or conspiring with others to send, transmit, or advertise in, any commercial electronic communication of any kind that is in violation of or inconsistent with the agreements set forth in the Complaint or any amended or future versions of those agreements or in violation of the federal CAN-SPAM Act, Washington’s Commercial Electronic Mail Act, Washington’s Consumer Protection Act or any other law; and

b. using, or directing, aiding, facilitating, causing, or conspiring with others to use the computers or computer networks of Microsoft’s communication services, including but not limited to Windows Live Hotmail, in violation of or inconsistent with the agreements set forth in the Complaint or any amended or future versions of those agreements or in violation of any law; and

c. obtaining, compiling, selling, trafficking in, or trading, or directing, aiding, or conspiring with others to obtain, compile, sell, traffic in, or trade e-mail addresses for any purpose relating to the sending or delivery of any unsolicited bulk or unsolicited commercial electronic communications, for any purpose that is in violation of or inconsistent with the agreements set forth in the Complaint or any amended or future versions of those agreements or for any purpose that is in violation of any law; and

d. opening, creating or accessing, or directing, aiding, facilitating or

1 conspiring with others to open, create, or access any Microsoft communication services, including
 2 but not limited to Windows Live Hotmail, for any purpose relating to the sending or delivery of
 3 any unsolicited bulk or unsolicited commercial electronic communications, for any purpose that is
 4 in violation of or inconsistent with the agreements set forth in the Complaint or any amended or
 5 future versions of those agreements or for any purpose that is in violation of any law; and

6 e. using, selling, offering for sale or distributing, or directing, aiding, or
 7 conspiring with others to sell, offer for sale or distribute any software that allows the user to send
 8 unsolicited bulk or unsolicited commercial electronic communications to any Microsoft
 9 communication services, including but not limited to Windows Live Hotmail.

10 2. Any proceeding before this Court to enforce the terms of this Permanent Injunction
 11 shall be resolved by means of a noticed motion without the necessity of filing a new and separate
 12 action. The parties to such proceedings will be permitted to submit evidence and memorandum of
 13 points and authorities according to the ordinary briefing requirements for a noticed motion as set
 14 forth by the Federal Rules of Civil Procedure and this Court's local rules then in effect. The Court
 15 shall have discretion to allow live testimony or other evidence in addition to any documentary
 16 evidence or declarations submitted as part of the noticed motion briefings. The court shall
 17 determine whether Defendants or any of them, has violated the terms of this Permanent Injunction
 18 pursuant to this definition. A "violation" shall be defined as the failure to comply with paragraphs
 19 1.a., 1.b., 1.c., 1.d., or 1.e above.

20 3. In the event that the Court finds that Defendants or any of them, has violated this
 21 Stipulated Permanent Injunction, the parties agree that resulting damages suffered by Microsoft
 22 may be impractical or extremely difficult to calculate. Because of this difficulty in determining
 23 the amount of damages resulting from this Stipulated Permanent Injunction, in the event that any
 24 defendant is found by the court to have violated this Stipulated Permanent Injunction, the parties
 25 agree that the violating defendant party shall pay damages in the sum of \$5,000,000, as liquidated
 26 damages, corresponding to Microsoft's reputation and lost profit damages only (*i.e.* Microsoft may
 27 also prove and recover its other categories of damages in addition to the liquidated damages for
 28 reputation/lost profits). Microsoft shall also recover its associated attorneys' fees, expenses, and

1 costs.

2 4. Each of the Defendants shall provide a copy of this Stipulated Permanent
3 Injunction to each employee, agent, contractor or affiliate acting on his or its behalf in regard to
4 any electronic marketing.

5 **STIPULATION ACCEPTED AND ORDER GRANTED** this 7 day of June 2011.

6
7 

8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Presented by:

ORRICK, HERRINGTON & SUTCLIFFE
LLP

AOKI LAW PLLC

By: /s/ Jeffrey L. Cox
Mark S. Parris (WSBA #13870)
mparris@orrick.com
Jeffrey L. Cox (WSBA #37534)
jcox@orrick.com

By: /s/ Russell M. Aoki
Russell M. Aoki (WSBA #15717)
russ@aokilaw.com

701 5th Avenue
Suite 5600
Seattle, WA 98104-7097
Telephone: +1-206-839-4300
Facsimile: +1-206-839-4301

720 Olive Way, Suite 1525
Seattle, WA 98101-1816
Telephone: +1-206-624-1900
Facsimile: +1-206-442-4396

Gabriel M. Ramsey (*pro hac vice*)
gramsey@orrick.com
I. Neel Chatterjee (*pro hac vice*)
nchatterjee@orrick.com
Jacob M. Heath (*pro hac vice*)
jheath@orrick.com

Attorneys for Defendants Boris Mizhen,
Media Network, Inc., New Age Opt-In, Inc.
and I-Permission, Inc.

1000 Marsh Road
Menlo Park, CA 94025
Telephone: +1-650-614-7400
Facsimile: +1-650-614-7401

Attorneys for Plaintiff

JOHNS MONROE MITSUNAGA
KOLOUŠKOVÁ PLLC

By: /s/ Darrell S. Mitsunaga
Darrell S. Mitsunaga (WSBA #12992)
Mitsunaga@jmmlaw.com

1601 114th Avenue SE, Suite 110
Bellevue, WA 98004-6969
Telephone: +1-425-451-2812
Facsimile: +1-425-451-2818

Attorneys for Defendant Dmitri Kovalsky